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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,136	10/24/2003	David M. Allen	2646-000001	1778

27572 7590 11/28/2006

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EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/693,136

Applicant(s)

ALLEN, DAVID

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN  
PRIMARY EXAMINER

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Upon further consideration, the final rejection mailed on 4/3/06 has been withdrawn. The amendment filed on 6/5/06 has been considered and entered.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1 & 17** are rejected under 35 U.S.C. 102(b) as being anticipated by Handwerker (4413029).

For claim 1, Handwerker teaches a protective ground mat comprising: a non-rigid base C; a plurality of hold-downs 53 coupled to the base; and a plurality of tensioners T, 17,45,46, each tensioner having a first portion 46,45,17 that is fixedly coupled to the non-rigid base and a second portion T that may be selectively coupled to the first portion to adjust a distance between an associated pair of the hold-downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base.

For claim 17, Handwerker teaches a method of installing a protective ground mat to the ground, the protective ground mat having a non-rigid base C, the method comprising: securing (by using ballast 53) the protective ground mat to the ground at a plurality of locations; and tensioning (by using members T,17,45,46 the base after it has

been secured to the ground to adjust a size, a shape or both the size and the shape of a perimeter of the base so that it conforms to a contour of the ground.

4. **Claims 17-19** are rejected under 35 U.S.C. 102(b) as being anticipated by Ireland (1321747).

For claim 17, Ireland teaches a method of installing a protective ground mat to the ground, the protective ground mat having a non-rigid base 12, the method comprising: securing (by placing it to the designated location) the protective ground mat to the ground at a plurality of locations; and tensioning (by tightening or loosening strap and loop 8,10,11,14) the base after it has been secured to the ground to adjust a size, a shape or both the size and the shape of a perimeter of the base so that it conforms to a contour of the ground. Note that although Ireland teaches a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc.” ([www.dictionary.com](http://www.dictionary.com)), which the cover of Ireland fits the definition and it is placed on the ground. Furthermore, although it appears that Applicant's ground mat is laid flat on the ground surface as shown in fig. 2, hence, ground mat, it is also a cover that is not directly laid flat on the ground surface as shown in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claim 18, Ireland inherently teaches wherein prior to securing the protective ground mat to the ground, the method includes opening a slit (where ref. 9 is pointing at) in the base and fitting the base about an object. A user has to open the slit at ref. 9 and fit it around the object or plant before securing the mat on the ground.

For claim 19, Ireland teaches wherein the step of fitting the base about an object includes forming a hole (where ref. 11 is pointing at) in the base, the hole intersecting the slit (see fig. 2 where the slit (where ref. 9 is pointing at) intersects the hole (where ref. 8 is pointing at)).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-4,9,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland (as above) in view of Rowe et al. (369616).

For claim 1, Ireland teaches a protective ground mat comprising: a non-rigid base 12; and a plurality of tensioners 8,10,11,14 each tensioner having a first portion 10,14 that is fixedly coupled to the non-rigid base and a second portion 8,11 that may be selectively coupled to the first portion to adjust a distance between an associated pair of the hold-downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base. However, Ireland is silent about a plurality of hold-downs coupled to the base.

Rowe et al. teach a tree protector comprising a non-rigid base D having a plurality of hold-downs F coupled to the base to secure the base to the ground. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of hold-downs as taught by Rowe et al. coupled to the base of Ireland in order to secure the protector/mat to the ground. Note that although Ireland and Rowe et al. teach a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc.” ([www.dictionary.com](http://www.dictionary.com)), which the covers of Ireland and Rowe et al. fit the definition and it is placed on the ground. Furthermore, although it appears that Applicant's ground mat is laid flat on the ground surface as shown in fig. 2, hence, ground mat, it is also a cover that is not directly laid flat on the ground surface as shown in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claim 2, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the base includes a pair of edges 9 that cooperate to define a slit and wherein the protective ground mat further includes a closure device 8 for selectively closing the slit.

For claim 3, Ireland as modified by Rowe et al. is silent about wherein the closure device includes at least one of: a hook and loop fastener and a zipper. It would have

been an obvious substitution of functional equivalent to substitute the closure device of Ireland as modified by Rowe et al. with at least one of a hook and loop fastener and a zipper, since both types of fastener would perform the same function to close up the slit.

For claim 4, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the slit extends from an outer edge of the base to a point outwardly of a center of the base. See figures, self explanatory.

For claim 9, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the first portion 10,14 includes a loop 10 and the second portion 8,11 includes a strap, the strap having a first end, which is secured to the base (see fig. 4), and a second end 11 that is disposed through the loop (see fig. 2 where ref. 11 fits through loop 10).

For claim 10, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein an aperture (where ref. 8 is pointing at in fig. 2) is formed in the base and the slit intersects the aperture (ref. 9 goes all the way up to ref. 8 in fig. 2).

7. **Claims 5-8,11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland as modified by Rowe et al. as applied to claims 1,2,4 above, and further in view of Allen (4700507).

For claims 5-8, Ireland as modified by Rowe et al. is silent about wherein the slit terminates inwardly at a series of perforations, and wherein the series of perforations define a plurality of intersecting lines. Allen teaches a tree protector comprising a base 8 with a plurality of cut-aways 10-12 to accommodate different tree sizes, and wherein each shape is disposed inside or abuts another one of the shapes. It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of cut-aways as taught by Allen in the base of Ireland as modified by Rowe et al. in order to accommodate different tree sizes. In addition, it would have been an obvious substitution of functional equivalent to substitute the cut-aways of Ireland as modified by Rowe et al. and Allen with perforations, since both types of removal means would perform the same function to allow a user to tear away the material so as to accommodate to different tree sizes. The combination of Ireland as modified by Rowe et al. and Allen teaches wherein the series of perforations define a plurality of shapes, since Allen already teaches a plurality of shapes. Furthermore, it would have been an obvious substitution of functional equivalent to substitute the cut-aways of Ireland as modified by Rowe et al. and Allen with perforations defining a plurality of intersecting lines, since both types of removal means would perform the same function to allow a user to tear away the material so as to accommodate to different tree sizes.

Note that although Ireland, Rowe et al., and Allen teach a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc." ([www.dictionary.com](http://www.dictionary.com)), which the covers of Ireland, Rowe et al., and Allen fit the definition and it is placed on the ground. Furthermore, although it appears that Applicant's ground mat is laid flat on the ground surface as shown in fig. 2, hence,



ground mat, it is also a cover that is not directly laid flat on the ground surface as shown in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claims 11-15, Ireland as modified by Rowe et al. is silent about cutting indicia on the base, wherein the cutting indicia defines a plurality of shapes, wherein each shape is disposed inside or abuts another one of the shapes, wherein the shapes are concentric with one another, and wherein each of the shapes is similar but differently sized.

Allen teaches a tree protector comprising a base 8 with a plurality of cut-aways or cutting indicia 10-12 to accommodate different tree sizes, wherein the cutting indicia defines a plurality of shapes, wherein each shape is disposed inside or abuts another one of the shapes, wherein the shapes are concentric with one another, and wherein each of the shapes is similar but differently sized. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of cut-aways with the features as taught by Allen in the base of Ireland as modified by Rowe et al. in order to accommodate different tree sizes.

8. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland (as above) in view of Rowe et al. (as above) and Allen (as above). All limitations have been discussed in the above claims, so please see the above claims for explanation.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'Son T. Nguyen', written in a cursive style.

Son T Nguyen  
Primary Examiner  
AU 3643